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§ 6401. Findings and declaration of policy

(a) Findings

Congress finds that—

(1) fluid milk products are basic foods and are a primary source of required nutrients such as calcium, and otherwise are a valuable part of the human diet;

(2) fluid milk products must be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(3) the dairy industry plays a significant role in the economy of the United States, in that milk is produced by thousands of milk producers and dairy products (including fluid milk products) are consumed every day by millions of people in the United States;

(4) the processing of milk into fluid milk products and the marketing of such products are important to the dairy industry because the fluid milk segment of the dairy market contributes substantially to ensuring that the prices paid to milk producers for raw milk are stable and adequate to maintain the overall strength of the dairy industry;

(5) the maintenance and expansion of markets for fluid milk products are vital to the Nation's fluid milk processors and milk producers, as well as to the general economy of the United States;

(6) the congressional purpose underlying this chapter is to maintain and expand markets for fluid milk products, not to maintain or expand any processor's share of those markets and that the chapter does not prohibit or restrict individual advertising or promotion of fluid milk products since the programs created and funded by this chapter are not extended to replace individual advertising and promotion efforts;

(7) the cooperative development, financing, and implementation of a coordinated program of advertising and promotion of fluid milk products is necessary to maintain and expand markets for fluid milk products;

(8) it is appropriate to finance the cooperative program described in paragraph (6)¹ with self-help assessments paid by the fluid milk processors; and

(9) fluid milk products move in interstate and foreign commerce, and fluid milk products that do not move in such channels of commerce directly burden or affect interstate commerce in fluid milk products.

(b) Policy

It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of powers pro-

vided in this chapter, of an orderly procedure for developing, financing, through adequate assessments on fluid milk products produced in the United States and carrying out an effective, continuous, and coordinated program of promotion, research, and consumer information designed to strengthen the position of the dairy industry in the marketplace and maintain and expand domestic and foreign markets and uses for fluid milk products, the purpose of which is not to compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name fluid milk products, but rather to maintain and expand the markets for all fluid milk products, with the goal and purpose of this chapter being a national governmental goal that authorizes and funds programs that result in government speech promoting government objectives.

(Pub. L. 101-624, title XIX, §1999B, Nov. 28, 1990, 104 Stat. 3914; Pub. L. 104-127, title I, §146(a), (b), Apr. 4, 1996, 110 Stat. 918.)

AMENDMENTS

1996—Subsec. (a)(6) to (9). Pub. L. 104-127, §146(a), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (b). Pub. L. 104-127, §146(b), amended heading and text of subsec. (b) generally. Text read as follows: "It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this chapter, of an orderly procedure for developing, financing (through adequate assessments on fluid milk products produced in the United States) and carrying out an effective and coordinated program of advertising designed to strengthen the position of the dairy industry in the marketplace and to maintain and expand markets and uses for fluid milk products produced in the United States. Nothing in this chapter shall be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk."

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-72, §1, Aug. 11, 1993, 107 Stat. 717, provided that: "This Act [amending sections 6402 and 6409 of this title] may be cited as the 'Fluid Milk Promotion Amendments Act of 1993'."

SHORT TITLE

Section 1999A of Pub. L. 101-624 provided that: "This subtitle [subtitle H (§§ 1999A—1999R) of title XIX of Pub. L. 101-624, enacting this chapter] may be cited as the 'Fluid Milk Promotion Act of 1990'."

§ 6402. Definitions

As used in this chapter:

(1) Advertising

The term "advertising" means any advertising or promotion program involving only fluid milk products and directed toward increasing the general demand for fluid milk products.

(2) Board

The term "Board" means the National Processor Advertising and Promotion Board established under section 6407(b) of this title.

(3) Fluid milk product

The term "fluid milk product" has the meaning given the term in—

(A) section 1000.15 of title 7, Code of Federal Regulations, subject to such amendments as may be made by the Secretary; or

¹ So in original. Probably should be paragraph "(7)".

(B) any successor regulation.

(4) Fluid milk processor

The term “fluid milk processor” means any person who processes and markets commercially more than 3,000,000 pounds of fluid milk products in consumer-type packages per month (excluding products delivered directly to the place of residence of a consumer).

(5) Department

The term “Department” means the Department of Agriculture.

(6) Research

The term “research” means market research to support advertising and promotion efforts, including educational activities, research directed to product characteristics, product development, including new products or improved technology in production, manufacturing or processing of milk and the products of milk.

(7) Secretary

The term “Secretary” means the Secretary of Agriculture.

(8) United States

The term “United States”, except as used in sections 6410 through 6412 of this title, means the 48 contiguous States in the continental United States and the District of Columbia.

(Pub. L. 101-624, title XIX, §1999C, Nov. 28, 1990, 104 Stat. 3915; Pub. L. 103-72, §2(a), Aug. 11, 1993, 107 Stat. 717; Pub. L. 104-127, title I, §146(c), Apr. 4, 1996, 110 Stat. 918; Pub. L. 107-171, title I, §1506(a), (b), May 13, 2002, 116 Stat. 210.)

AMENDMENTS

2002—Par. (3). Pub. L. 107-171, §1506(a), added par. (3) and struck out heading and text of former par. (3). Text read as follows: “The term ‘fluid milk product’—

“(A) means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

“(B) does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey.”

Par. (4). Pub. L. 107-171, §1506(b), substituted “3,000,000 pounds of fluid milk products in consumer-type packages per month (excluding products delivered directly to the place of residence of a consumer)” for “500,000 pounds of fluid milk products in consumer-type packages per month”.

1996—Par. (6). Pub. L. 104-127 amended heading and text of par. (6) generally. Text read as follows: “The term ‘research’—

“(A) means market research limited to the support of advertising and promotion efforts, including educational activities; and

“(B) does not include research directed to product characteristics such as nutrients; product development including new products; or improved technology in production, manufacturing or processing; or any other efforts not directly applicable to measuring or increasing the effectiveness of advertising activities in expanding sales of fluid milk products.”

1993—Par. (4). Pub. L. 103-72 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘fluid milk processor’ means any person who processes and markets commercially fluid milk products in consumer-type packages.”

§ 6403. Authority to issue orders

(a) In general

To effectuate the declared policy under section 6401(b) of this title, the Secretary shall issue and from time to time may amend, orders applicable to all fluid milk processors, authorizing—

(1) the collection of assessments on fluid milk products subject to this chapter; and

(2) the use of the assessments to provide research and advertising in a manner prescribed by this chapter.

(b) Scope

Any order issued under this chapter shall be national in scope.

(c) One order

Not more than one order shall be in effect under this chapter at any one time.

(Pub. L. 101-624, title XIX, §1999D, Nov. 28, 1990, 104 Stat. 3916.)

§ 6404. Notice and comment

Not later than 60 days after the Secretary receives a request for the issuance of an order under this chapter, and a specific proposal for an order from individual fluid milk processors that marketed during a representative period, as determined by the Secretary, not less than 30 percent of the volume of fluid milk products marketed by all processors, the Secretary shall publish the proposed order and give due notice and opportunity for public comment on the proposed order.

(Pub. L. 101-624, title XIX, §1999E, Nov. 28, 1990, 104 Stat. 3916.)

§ 6405. Findings and issuance of orders

(a) In general

After notice and opportunity for public comment are given, as provided in section 6404 of this title, the Secretary shall issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements and the declared policy of this chapter.

(b) Effective date

Such order shall be issued and, if approved by fluid milk processors as provided in section 6413 of this title, shall become effective not later than 180 days following publication of the proposed order.

(Pub. L. 101-624, title XIX, §1999F, Nov. 28, 1990, 104 Stat. 3916.)

§ 6406. Regulations

The Secretary may issue such regulations as may be necessary to carry out this chapter and the powers vested in the Secretary by this chapter.

(Pub. L. 101-624, title XIX, §1999G, Nov. 28, 1990, 104 Stat. 3916.)

§ 6407. Required terms in orders

(a) In general

Each order issued under this chapter shall contain the terms and conditions prescribed in this section.

(b) National Processor Advertising and Promotion Board

(1) Establishment

The order shall establish a National Processor Advertising and Promotion Board to administer the order.

(2) Service to entire industry

In administering the order, the Board shall carry out programs and projects that will provide maximum benefit to the fluid milk industry and promote only fluid milk products. The Board shall, to the extent practicable, ensure that advertising coverage in each region is proportionate to the funds collected from each region.

(3) Regions

The Secretary shall establish not less than 12 nor more than 15 regions in order to ensure appropriate geographic representation on the Board.

(4) Board membership

The Board shall consist of one member appointed by the Secretary, from among fluid milk processors, to represent each of the regions established under paragraph (3), with the membership representing, to the extent practicable, differing sizes of operations. The Secretary shall appoint five additional at-large members to the Board, of which at least three shall be fluid milk processors and at least one shall be from the general public.

(5) Terms of office

The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years, as determined by the Secretary. No member shall serve for more than 2 consecutive terms, except that the members that are selected to serve for the initial term of 1 or 2 years shall be eligible to be reappointed for a 3-year term.

(6) Compensation

Each member of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in the performance of duties of the Board.

(c) Powers and duties of Board

The order shall define the powers and duties of the Board, which shall include the power and duty—

- (1) to administer the order in accordance with the terms and conditions of the order;
- (2) to make rules to effectuate the terms and conditions of the order;
- (3) to receive, investigate, and report to the Secretary complaints of violations of the order;

(4) to develop and recommend such rules, regulations, and amendments to the order to the Secretary for approval as may be necessary for the development and execution of programs or projects to carry out the order;

(5) to employ such persons as the Board considers necessary and determine the compensation and define the duties of the persons;

(6) to prepare and submit for the approval of the Secretary, prior to the beginning of each fiscal year, a fiscal year budget of the anticipated expenses in the administration of the order, including the probable costs of all programs and projects;

(7) to develop programs and projects, subject to subsection (d) of this section;

(8) to enter into contracts or agreements, with the approval of the Secretary, to develop and carry out programs or projects of research and advertising;

(9) to carry out advertising or research, and pay the costs of the projects with funds collected pursuant to section 6409 of this title;

(10) to keep minutes, books, and records that reflect all of the acts and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;

(11) to furnish the Secretary with such other information as the Secretary may require; and

(12) to invest funds collected by the Board pursuant to subsection (g) of this section.

(d) Plans and budgets

(1) Budgets

The order shall require the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of the fiscal year, to develop budgets of the anticipated expenses and disbursements of the Board in the implementation of the order, including projected costs of research and advertising. The budget shall be submitted to the Secretary and be effective on the approval of the Secretary.

(2) Incurring expenses

The Board may incur such expenses for research or advertising of fluid milk products, and other expenses for the administration, maintenance, and functioning of the Board, as may be authorized by the Secretary. The expenses shall include any implementation, administrative, and referendum costs incurred by the Department.

(3) Paying expenses

The funds to cover the expenses referred to in paragraph (2) shall be paid from assessments collected under section 6409 of this title.

(4) Limitation on spending

Effective 1 year after the date of the establishment of the Board, the Board shall not spend in excess of 5 percent of the assessments collected for the administration of the Board.

(e) Prohibition on branded advertising

A program or project conducted under this chapter shall not make any reference to private brand names or use false or unwarranted claims on behalf of fluid milk products, or false or un-

warranted statements with respect to the attributes or use of any competing products, except that this subsection shall not preclude the Board from offering its programs and projects for use by commercial parties, under such terms and conditions as the Board may prescribe as approved by the Secretary.

(f) Contracts and agreements

(1) In general

To ensure efficient use of funds collected under this chapter, the order shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of programs or projects for fluid milk products research and advertising and for the payment of the costs of the programs or projects with funds received by the Board under the order.

(2) Requirements

Any such contract or agreement shall provide that—

(A) the contracting party shall develop and submit to the Board a program or project, together with a budget or budgets that shall disclose estimated costs to be incurred for such program or project;

(B) the program or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of all of the transactions of the contracting party, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(g) Investment of funds

(1) In general

The order shall provide that the Board, with the approval of the Secretary, may invest assessment funds collected by the Board under the order, pending disbursement of the funds, only in—

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States.

(2) Income

Income from any such investment may be used for any purpose for which the invested funds may be used.

(h) Books and records of Board

(1) In general

The order shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Board.

(2) Audits

The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal year. A report of each such audit shall be submitted to the Secretary.

(i) Books and records of processors

(1) In general

The order shall require that each fluid milk processor subject to this chapter maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) Use of information

Information obtained under paragraph (1) shall be made available to the Secretary as is appropriate for the effectuation, administration, or enforcement of this chapter, or any order or regulation issued under this chapter.

(3) Confidentiality

(A) In general

Except as provided in subparagraphs (B) and (C), commercial or financial information that is obtained under paragraph (1) or (2) and that is privileged or confidential shall be kept confidential by all officers and employees of the Department and agents of the Board, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

(B) Availability of information

Except as otherwise provided in this chapter, information obtained under this chapter may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(C) Other exceptions

Nothing in subparagraph (A) may be construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to an order or statistical data collected from the persons, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating any order, together with a statement of the particular provisions of the order violated by the person.

(4) Penalty

Any person violating this subsection, on conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if such person

is an agent of the Board or an officer or employee of the Department, shall be removed from office.

(5) Withholding information

Nothing in this subsection shall authorize the Secretary to withhold information from a duly authorized committee or subcommittee of Congress.

(6) Time requirement

The records required under paragraph (1) shall be maintained for 2 years beyond the fiscal year of the applicability of the records.

(j) Prohibition on use of funds to influence governmental action

(1) In general

Except as otherwise provided in paragraph (2), the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing legislation or government action or policy.

(2) Exception

Paragraph (1) shall not apply to the development or recommendation of amendments to the order.

(k) Coordination

The order shall require the Board to take reasonable steps to coordinate the collection of assessments, and advertising and research activities of the Board with the National Dairy Promotion and Research Board established under section 4504(b) of this title.

(l) Exemptions

The order shall exempt fluid milk products exported from the United States from assessments under the order.

(m) Report

The Secretary shall provide annually for an independent evaluation of the effectiveness of the fluid milk promotion program carried out under this chapter during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 4504(b) of this title.

(n) Other terms and conditions

The order also shall contain such terms and conditions, not inconsistent with this chapter, as are necessary to effectuate this chapter, including regulations relating to the assessment of late payment charges.

(Pub. L. 101-624, title XIX, §1999H, Nov. 28, 1990, 104 Stat. 3916.)

§ 6408. Permissive terms

(a) In general

Each order issued under this chapter may contain one or more of the terms and conditions described in this section.

(b) Advertising

The order may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising of fluid milk products and the use of funds collected under this chapter for such programs or projects.

(c) Research and development

The order may provide for establishing and carrying out research projects and studies to support the advertising efforts for fluid milk products, and the use of funds collected under the order for such projects and studies.

(d) Reserve funds

The order may provide authority to accumulate reserve funds from assessments collected pursuant to the order, to permit an effective and continuous coordinated program of research and advertising in years when the assessment income may be reduced, except that the total reserve fund may not exceed 25 percent of the amount budgeted for the operation in the current fiscal year of the order.

(e) Other terms

The order may contain such other terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter as are necessary to effectuate the other provisions of the order.

(Pub. L. 101-624, title XIX, §1999I, Nov. 28, 1990, 104 Stat. 3920.)

§ 6409. Assessments

(a) In general

The order shall provide that each fluid milk processor shall pay an assessment on each unit of fluid milk product that such person processes and markets commercially in consumer-type packages in the United States.

(b) No effect on producer prices

Such assessments shall not—

(1) reduce the prices paid under the Federal milk marketing orders issued under section 608c of this title;

(2) otherwise be deducted from the amounts that handlers must pay to producers for fluid milk products sold to a processor; or

(3) otherwise be deducted from the price of milk paid to a producer by a handler, as determined by the Secretary.

(c) Remitting assessments

(1) In general

Assessments required under subsection (a) of this section shall be remitted by the fluid milk processor directly to the Board in accordance with the order and regulations issued by the Secretary.

(2) Time to remit assessment

Each processor who is responsible for the remittance of an assessment under paragraph (1) shall remit the assessment to the Board not later than the last day of the month following the month that the milk being assessed was marketed.

(3) Verification

Remittances shall be verified by market administrators and State regulatory officials, and local and State Agricultural Stabilization and Conservation Service offices, as provided by the Secretary.

(d) Limitation on assessments

Not more than one assessment may be assessed under this section for the purposes of this

chapter on a processor for any unit of fluid milk product.

(e) Producer-handlers

Producer-handlers that are required to pay the assessment imposed under section 4504(g) of this title, and that are fluid milk processors, shall also be responsible for the additional assessment imposed by this section.

(f) Processor assessment rate

Except as provided in section 6415(b) of this title, the rate of assessment prescribed by the order shall be 20 cents per hundredweight of fluid milk products marketed.

(Pub. L. 101-624, title XIX, §1999J, Nov. 28, 1990, 104 Stat. 3921; Pub. L. 103-72, §2(b), Aug. 11, 1993, 107 Stat. 717.)

AMENDMENTS

1993—Subsec. (e). Pub. L. 103-72 inserted “, and that are fluid milk processors,” after “section 4504(g) of this title”.

§ 6410. Petition and review

(a) Petition

(1) In general

A person subject to an order issued under this chapter may file with the Secretary a petition—

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

(2) Hearings

The petitioner shall be given the opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) Ruling

After the hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) Review

(1) Commencement of action

The district courts of the United States in any district in which the person who is a petitioner under subsection (a) of this section resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a) of this section.

(2) Process

Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further proceedings as, in the opinion of the court, the law requires.

(Pub. L. 101-624, title XIX, §1999K, Nov. 28, 1990, 104 Stat. 3921.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6411. Enforcement

(a) Jurisdiction

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this chapter.

(b) Referral to Attorney General

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this chapter, or any order or regulation issued under this chapter, if the Secretary believes that the administration and enforcement of this chapter would be adequately served by providing a suitable written notice or warning to the person who committed such violation or by administrative action under subsection (c) of this section.

(c) Civil penalties and orders

(1) Civil penalties

Any person who violates any provision of any order or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulations, may be assessed—

(A) a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation; or

(B) in the case of a willful failure or refusal to pay, collect, or remit any assessment or fee duly required of the person under this chapter or a regulation issued under this chapter, a civil penalty by the Secretary of not less than \$10,000 nor more than \$100,000 for each such violation.

Each violation shall be a separate offense.

(2) Cease-and-desist orders

In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing such violation.

(3) Notice and hearing

No penalty shall be assessed or cease-and-desist order issued by the Secretary unless the person against whom the penalty is assessed or the order issued is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) Finality

The order of the Secretary assessing a penalty or imposing a cease-and-desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate district court of the United States in accordance with subsection (d) of this section.

(d) Review by district court**(1) Commencement of action**

Any person against whom a violation is found and a civil penalty assessed or cease-and-desist order issued under subsection (c) of this section may obtain review of the penalty or order by—

(A) filing, within the 30-day period beginning on the date the penalty is assessed or order issued, a notice of appeal in—

(i) the district court of the United States for the district in which the person resides or carries on business; or

(ii) the United States District Court for the District of Columbia; and

(B) simultaneously sending a copy of the notice by certified mail to the Secretary.

(2) Record

The Secretary shall file promptly in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) Standard of review

A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) Failure to obey orders

Any person who fails to obey a cease-and-desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d) of this section, of not more than \$5,000 for each offense. Each day during which the failure continues shall be considered as a separate violation of such order.

(f) Failure to pay penalties

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court in which the person resides or conducts business. In the action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(g) Additional remedies

The remedies provided in this chapter shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 101-624, title XIX, §1999L, Nov. 28, 1990, 104 Stat. 3922; Pub. L. 102-237, title VIII, §809, Dec. 13, 1991, 105 Stat. 1883.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102-237 substituted “this section” for “this subsection” after “brought under”.

§ 6412. Investigations and power to subpoena**(a) Investigations**

The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective administration of this chapter; or

(2) to determine whether any person has engaged or is engaging in any act that constitutes a violation of this chapter, or any order, rule, or regulation issued under this chapter.

(b) Subpoenas, oaths, and affirmations**(1) In general**

For the purpose of an investigation under subsection (a) of this section, the Secretary may administer oaths and affirmations, and issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) Administrative hearings

For the purpose of an administrative hearing held under section 6410 or 6411 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) Aid of courts

In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b) of this section. The court may issue an order requiring such person to comply with such a subpoena.

(d) Contempt

Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Process

Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) Hearing site

The site of any hearings held under section 6410 or 6411 of this title shall be within the judicial district where such person resides or has a principal place of business.

(Pub. L. 101-624, title XIX, §1999M, Nov. 28, 1990, 104 Stat. 3924.)

§ 6413. Requirement of initial referendum**(a) In general**

Within the 60-day period immediately preceding the effective date of an order issued under section 6405(a) of this title, the Secretary shall conduct a referendum among fluid milk processors to ascertain whether the order shall go into effect.

(b) Implementation

If, as a result of the referendum conducted under subsection (a) of this section, the Sec-

retary determines that implementation of the order is favored—

- (1) by at least 50 percent of fluid milk processors voting in the referendum; and
- (2) by fluid milk processors voting in the referendum that marketed during the representative period, as determined by the Secretary, 60 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the referendum;

the order shall become effective as provided in section 6405(b) of this title.

(c) Costs of referendum

The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this chapter.

(d) Manner

(1) In general

Referenda conducted pursuant to this chapter shall be conducted in a manner determined by the Secretary.

(2) Advance registration

A fluid milk processor who chooses to vote in any referendum conducted under this chapter shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under paragraph (4).

(3) Voting

A fluid milk processor who votes in any referendum conducted under this chapter shall vote in accordance with procedures established by the Secretary. The ballots and other information or reports that reveal or tend to reveal the vote of any processor shall be held strictly confidential.

(4) Notice

The Secretary shall notify all processors at least 30 days prior to a referendum conducted under this chapter. The notice shall explain the procedure established under this subsection.

(Pub. L. 101-624, title XIX, §1999N, Nov. 28, 1990, 104 Stat. 3924; Pub. L. 104-127, title I, §146(d)(1), Apr. 4, 1996, 110 Stat. 919.)

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104-127 substituted “fluid milk processors voting in the referendum;” for “all processors;”.

§ 6414. Suspension or termination of orders

(a) Suspension or termination by Secretary

The Secretary shall, whenever the Secretary finds that the order or any provision of the order obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of the order or provision.

(b) Other referenda

(1) In general

The Secretary may conduct at any time a referendum of persons who, during a representative period as determined by the Sec-

retary, have been fluid milk processors on whether to suspend or terminate the order, and shall hold such a referendum on request of the Board or any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the preceding referendum.

(2) Suspension or termination

If the Secretary determines that the suspension or termination is favored—

- (A) by at least 50 percent of fluid milk processors voting in the referendum; and
- (B) by fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the referendum;

the Secretary shall, within 6 months after making the determination, suspend or terminate, as appropriate, collection of assessments under the order, and suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(3) Costs; manner

Subsections (c) and (d) of section 6413 of this title shall apply to a referendum conducted under this subsection.

(Pub. L. 101-624, title XIX, §1999O, Nov. 28, 1990, 104 Stat. 3925; Pub. L. 104-127, title I, §146(d)(2), (e), Apr. 4, 1996, 110 Stat. 919; Pub. L. 107-171, title I, §1506(c), May 13, 2002, 116 Stat. 210.)

AMENDMENTS

2002—Pub. L. 107-171 redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out heading and text of former subsec. (a). Text read as follows: “Any order effective under this chapter shall be terminated December 31, 2002. The Secretary shall—

“(1) terminate the collection of assessments under the order upon such date; and

“(2) terminate activities under the order in an orderly manner as soon as practicable after such date.”

1996—Subsec. (a). Pub. L. 104-127, §146(e), substituted “2002” for “1996” in introductory provisions.

Subsec. (c)(1). Pub. L. 104-127, §146(d)(2)(A), substituted “fluid milk processors voting in the preceding referendum” for “all processors”.

Subsec. (c)(2)(B). Pub. L. 104-127, §146(d)(2)(B), substituted “fluid milk processors voting in the referendum;” for “all processors;”.

§ 6415. Amendments

(a) Amendments to order

Subject to subsection (b) of this section, the Secretary may issue such amendments to an order as may be necessary to carry out this chapter.

(b) Amendment to assessment rates

(1) In general

The Secretary may conduct at any time a referendum of persons who, during a representative period as determined by the Secretary, have been fluid milk processors on adjusting the assessment rate under the order issued under this chapter then in effect, and shall hold such a referendum on request of the

Board or any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by all processors.

(2) Adjustment to assessment rate

The Secretary shall adjust the assessment rate under the order whenever the Secretary determines that the adjustment is favored—

- (A) by at least 50 percent of fluid milk processors voting in the referendum; and
- (B) by fluid milk processors that marketed during a representative period, as determined by the Secretary, 60 percent or more of the volume of fluid milk products marketed by all processors;

In no event shall the rate of assessment prescribed by the order exceed 20 cents per hundredweight.

(3) Effective date

The adjusted assessment rate shall be effective on a date, as determined by the Secretary, after the results of the referendum are known, but not later than 30 days after the referendum.

(4) Costs; manner

Subsections (c) and (d) of section 6413 of this title shall apply to a referendum conducted under this subsection.

(Pub. L. 101-624, title XIX, §1999P, Nov. 28, 1990, 104 Stat. 3926.)

§ 6416. Independent evaluation of programs

(a) Review and evaluation

The Comptroller General of the United States shall review and evaluate the order to—

- (1) determine the effectiveness of the promotion program conducted under this chapter on fluid milk sales;
- (2) determine if the assessments for the program have been passed back to milk producers by fluid milk processors; and
- (3) make recommendations for future funding and assessment levels for the program.

(b) Report to Congress

The Comptroller General shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the valuations made under this section no later than January 1, 1995.

(Pub. L. 101-624, title XIX, §1999Q, Nov. 28, 1990, 104 Stat. 3926.)

§ 6417. Authorization of appropriations

(a) In general

There are authorized to be appropriated for each fiscal year such funds as are necessary to carry out this chapter.

(b) Administrative expenses

The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any order issued under this chapter.

(Pub. L. 101-624, title XIX, §1999R, Nov. 28, 1990, 104 Stat. 3926.)

CHAPTER 94—ORGANIC CERTIFICATION

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